



Rule and Interpretive/Policy Statement Review Checklist
(This form must be filled out electronically.)

This form is to be used when the current version of the rule or interpretive or policy statement has not previously been reviewed. When reviewing an interpretive or policy statement, this document is to be used only if the review of the statement is not in conjunction with the review of a rule.

All responses should be **bolded**.

Document(s) Reviewed (include title): **WAC 458-20-216 (Successors, quitting business.)**

Date last adopted/issued: **March 31, 1999**

Reviewer: **Diane Bren**

Date review completed: **February 17, 2003**

Briefly explain the subject matter of the document(s):

This rule explains the circumstances under which a person is considered to be a successor to a person quitting business. Successors are liable for the payment of outstanding tax liabilities incurred by the person to whom the successor succeeds. This rule explains that a successor can protect itself from the possibility of incurring this potentially unknown obligation by providing proper written notification to the Department.

Type an "X" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

1. Public requests for review:

YES	NO	
	X	Is this document being reviewed at this time because of a public (e.g., taxpayer or business association) request?

If "yes," provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request.

2. Need:

YES	NO	
X		Is the document necessary to comply with the statutes that authorize it? (E.g., Is it necessary to comply with or clarify the application of the statutes that are being implemented? Does it provide detailed information not found in the statutes?)
	X	Is the information provided in the document so obsolete that it is of little value, warranting the repeal or revision of the document?



X		Have the laws changed so that the document should be revised or repealed? (If the response is "yes" that the document should be repealed, explain and identify the statutes the rule implemented, and skip to Section 10.)
X		Is the document necessary to protect or safeguard the health, welfare (budget levels necessary to provide services to the citizens of the state of Washington), or safety of Washington's citizens? (If the response is "no", the recommendation must be to repeal the document.)

Please explain.

This rule needs to be revised to incorporate recent legislation.

RCW 82.04.180 was amended in 2003 to add the following to the definition of a successor:

- a person who acquires more than 50 percent of the fair market value of either the tangible assets or intangible assets of a business, and
- the surviving corporation of a statutory merger.

RCW 82.04.180 also added language to state that if the fair market value of the assets acquired by a successor is less than \$50,000, the successor's liability for unpaid tax is limited to the fair market value of the assets acquired from the taxpayer. The burden of establishing the fair market value of the assets acquired is on the successor.

In addition, RCW 82.32.140 was amended in 2003 to change successor liability to any taxpayer who quits business, or sells out, exchanges, or otherwise disposes of more than fifty percent of the fair market value of either its tangible or intangible assets. This is changed from a taxpayer who quits business, or sells out, exchanges, or otherwise disposes of his business or his stock of goods.

RCW 82.32.330 was amended in 2000 to state that the Department is not prohibited from disclosing to a person against whom the Department has asserted liability as a successor under RCW 82.32.140 return or tax information pertaining to the specific business of the taxpayer to which the person has succeeded.

The new Liability of Successor Waiver Agreement, Form Rev 31 0068, should be discussed in the rule as an alternative to an estimated assessment when an audit will not be able to be completed and assessed within six months of the written notification of successorship. The rule should let the taxpayer know of the availability of this form.

3. Related interpretive/policy statements, court decisions, BTA decisions, and WTDs:

Complete Subsection (a) only if reviewing a rule. Subsection (b) should be completed only if the subject of the review is an interpretive or policy statement. Excise Tax Advisories (ETAs), Property Tax Advisories (PTAs), and Interim Audit Guidelines (IAGs) are considered interpretive and/or policy statements.

(a)

YES	NO	
	X	Are there any interpretive or policy statements that should be incorporated into this rule? (An Ancillary Document Review Supplement should be



		completed for each and submitted with this completed form.)
	X	Are there any interpretive or policy statements that should be cancelled because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) that provide information that should be incorporated into this rule?
	X	Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the rule?

(b)

YES	NO	
		Should this interpretive or policy statement be incorporated into a rule?
		Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) that affect the information now provided in this document?
		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the document?

If the answer is “yes” to any of the questions in (a) or (b) above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

4. Clarity and Effectiveness:

YES	NO	
X		Is the document written and organized in a clear and concise manner?
X		Are citations to other rules, laws, or other authority accurate? (If no, identify the incorrect citation below and provide the correct citation.)
X		Is the document providing the result(s) that it was originally designed to achieve? (E.g., does it reduce the need for taxpayers to search multiple rules or statutes to determine their tax-reporting responsibilities or help ensure that the tax law and/or exemptions are consistently applied?)
	X	Do changes in industry practices warrant repealing or revising this document?
	X	Do administrative changes within the Department warrant repealing or revising this document?

Please explain.

Rule 216 is organized and written in a clear and concise manner. While statutory citations are correct, this rule does not reflect several recent changes to RCW 82.04.180, 82.32.140 and 82.32.330 as explained above in section 2.

5. Intent and Statutory Authority:



YES	NO	
X		Does the Department have sufficient authority to adopt this document? (Cite the statutory authority in the explanation below.)
X		Is the document consistent with the legislative intent of the statute(s) that authorize it? (I.e., is the information provided in the document consistent with the statute(s) that it was designed to implement ?) If “no,” identify the specific statute and explain below. List all statutes being implemented in Section 9, below.)
	X	Is there a need to recommend legislative changes to the statute(s) being implemented by this document?

Please explain.

RCW 82.32.300 authorizes and directs the Department of Revenue to make and publish rules necessary to enforce the provisions of chapters 82.02 through 82.23B, 82.27, and 82.32 RCW.

RCW 82.01.060 authorizes the director of the Department to adopt such rules as he or she may deem necessary or desirable to carry out the powers and duties imposed upon him or her or the Department by the legislature.

Rule 216 is consistent with the statutes in existence at the time the rule was last revised, but it needs to be updated to reflect subsequent statutory changes.

6. Coordination: Agencies should consult with and coordinate with other governmental entities that have similar regulatory requirements when it is likely that coordination can reduce duplication and inconsistency.

YES	NO	
	X	Could consultation and coordination with other governmental entities and/or state agencies eliminate or reduce duplication and inconsistency?

Please explain.

The Department has the exclusive authority to administer the taxes due by a successor that are addressed in Rule 216.

7. Cost: When responding, consider only the costs imposed by the document being reviewed and not by the statute.

YES	NO	
X		Have the qualitative and quantitative benefits of the document been considered in relation to its costs? (Answer “yes” only if a Cost Benefit Analysis was completed when the rule was last adopted or revised.)



Please explain.

This is an interpretive rule that does not impose any new or additional administrative burdens on taxpayers that are not imposed by law.

8. Fairness: When responding, consider only the impacts imposed by the document being reviewed and not by the statute.

YES	NO	
X		Does the document result in equitable treatment of those required to comply with it?
	X	Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community?
	X	Should the document be strengthened to provide additional protection to correct any disproportionate impact on any particular segment of the regulated community?

Please explain.

The information provided in this rule applies equally to all similarly situated taxpayers. However, the rule does not reflect important legislation that has taken effect subsequent to the last time the rule was revised. Taxpayers not aware that they need to refer to other documents to determine their tax-reporting responsibilities (e.g., to see if subsequent legislation applies) may, as a result, incorrectly report their tax liability.

9. LISTING OF DOCUMENTS REVIEWED: Use "bullets" with any lists, and include documents discussed above. Citations to statutes, interpretive or policy statements, and similar documents should include titles. Citations to Attorney General Opinions (AGOs) and court, Board of Tax Appeals (BTA) decisions, and Appeals Division decisions (WTDs) should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).

Statute(s) Implemented:

RCW 82.04.180 "Successor"
RCW 82.32.140 "Taxpayer quitting business -- Liability of successor"
RCW 82.32.330 "Disclosure of return or tax information"
RCW 82.60.060 "Repayment schedule"
RCW 82.61.030 "Tax deferral -- Eligibility"
RCW 82.63.045 "Repayment not required -- Repayment schedule for unqualified investment project -- Exceptions"

Interpretive and/or Policy Statements (e.g., ETAs, PTAs, IAGs):

Court Decisions:

Board of Tax Appeals Decisions (BTAs):



InQuest, Inc. v. State, BTA Docket No. 97-61 (October 28, 1998)

Appeal Division Decisions (WTDs):

- **Det. 01-019, 22 WTD 22 (2003)**, whether a newly-formed corporation was a successor when it indirectly acquired equipment that was knowingly and intentionally placed in an existing corporation in order to take advantage of its limited liability and corporate insurance coverage pending the formation of the new corporation, passing only briefly through the names of the shareholders.
- **Det. 01-186R, 21 WTD 308 (2002)**, which distinguishes the taxpayer's purchase and sales transactions from those involving the repossession of collateral by a party with a security interest.
- **Det. 01-170, 21 WTD 254 (2002)**, discusses a factual dispute over whether the taxpayer bought the restaurant inventory and fixtures from [lessee] or whether he took possession of abandoned property - did not rule on whether successor rules applied since the appeal was not timely filed.
- **Det. 99-278, 20 WTD 15 (2001)**, whether the surviving corporation of a merger is liable for the taxes, penalties and interest of the disappearing corporation, since the surviving corporation is not a successor corporation under the successor corporation statute and the disappearing corporation did not sell or convey the assets to the surviving corporation.
- **Det. 96-221, 17 WTD 116 (1998)**, discusses the five elements of a statutorily defined successor, the "step transaction doctrine", whether the successor operating a business similar to that of the alleged predecessor is relevant and the fact that a "major part of the materials, supplies, inventory, fixtures, or equipment" refers to the tangible personal property of the alleged predecessor and does not include intangible property.
- **Det. 95-132ER, 17 WTD 213 (1998)**, discusses the fact that a person who appeals a notice of successorship liability under RCW 82.32.160 cannot contest his predecessor's tax liability on the merits. That person must first pay the successorship tax and seek a refund under RCW 82.32.170 or 82.32.180.
- **Det. 97-121, 17 WTD 64 (1998)**, discusses the fact that a secured party's acquisition of property by "regular legal proceedings to enforce a lien" does not subject it to successorship liability. Peaceful repossession qualifies as a regular legal proceeding. Acceptance of a bill of sale in satisfaction of a lien is a peaceful repossession.
- **Det. 96-073, 16 WTD 79 (1996)**, discusses the fact that a notice of successorship merely indicating liability resulting from purchasing the seller's business or assets, without a copy of the assessment or, at least, a written notice stating an amount due and a payment date, is not an assessment notice as required by RCW 82.32.140.

Attorney General Opinions (AGOs):

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

10. Review Recommendation:



- ☒ **Amend**
- ☐ **Repeal/Cancel** (Appropriate when action is not conditioned upon another rule-making action or issuance of an interpretive or policy statement.)
- ☐ **Leave as is** (Appropriate even if the recommendation is to incorporate the current information into another rule.)
- ☐ **Begin the rule-making process for possible revision.** (Applies only when the Department has received a petition to revise a rule.)

Explanation of recommendation: Provide a brief summary of your recommendation. If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:

- Correct inaccurate tax-reporting information now found in the current rule;
- Incorporate legislation;
- Consolidate information now available in other documents (e.g., ETAs, WTDs, and court decisions); or
- Address issues not otherwise addressed in other documents (e.g., ETAs, WTDs, and court decisions).

Rule 216 needs to be updated to incorporate legislative changes.

11. Manager action: Date: February 19, 2004

AL Reviewed and accepted recommendation

Amendment priority (to be completed by manager):

- ☒ 1
☐ 2
☐ 3
☐ 4